said rule 3(3). However, nowhere in the affidavits filed on his behalf was it ever denied that his right to make representation under the said rule 3(3) was explained to him in Hokkien as deposed by Mahzon (encl. 21). Instead the applicant chose to challenge by way of the submission of his Counsel, that the fact that Mahzon attended a course at Institut Tadbiran Awam Negara (INTAN) does not make him conversant in Hokkien and competent as an interpreter (see exhibit 'MA1') and *PP v. Saw Ah Kow* [1993] 2 CLJ 232 was cited in support thereof. However, in *PP v. Saw Ah Kow, supra,* the learned Judicial Commissioner was dealing with the witness as an expert in linguistics especially Hokkien. Here, with respect, we are not dealing with expertise in language but it is merely a question of whether Mahzon, a Malay, is competent to converse in Hokkien. Looking at exhibit MA1 Mahzon got "pangkat kepujian" and therefore the interpretation to the applicant in Hokkien by Mahzon of his right to make a representation would not pose much difficulty. The statement to be interpreted is a fairly simple one. In any event nowhere in the affidavits in support, did the applicant challenge the competency of Mahzon as an interpreter or for that matter pursuant to the said rule 3(3) his right was interpreted to him in Hokkien. This is an issue of facts and not of law. If the facts remained unchallenged I have to accept the affidavit of Mahzon as true. In the result the applicant failed on this ground also.

In the circumstances the application for the writ of *habeas corpus* was dismissed by me. As agreed by the parties that my decision in this application would be binding in Criminal Application No. 44-11-93, I accordingly dismissed it also.

MAJLIS AMANAH RAKYAT (MARA)

v.

TAM SEEK HONG & 54 ORS.

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[ORIGINATING SUMMONS NO: 24-158-1993 (T)]
30 MARCH 1994

LAND LAW: Plaintiff is registered owner of land - Claim for possession of land by summary procedure - Order 89 r. 1 RHC 1980 - Defendant's occupation is based on TOL in the name of one of the defendants - Sections 66, 67, 69 National Land Code 1965 - Compensation for expenses incurred over land - Whether occupier of TOL had right to compensation from subsequent holder of TOL or subsequent registered proprietor - Indefeasibility of title.

PRACTICE & PROCEDURE: Recovery of possession of land - Whether summary procedure under O. 89 r. 1 RHC 1980 applies to oust defendant - Power to oust defendant/squatters without resorting to Court - Whether any triable issues.

PRACTICE & PROCEDURE: Contentious affidavit filed by solicitor for defendants - Whether contents of affidavit within personal knowledge of deponent - Order 41 r. 5 RHC 1980 - Whether failure to reveal sources of information and grounds of belief in in affidavit is non-compliance of RHC 1980 - Order 41 r. 4 RHC 1980 - Whether failure amounts to irregularity and curable.

CONTRACT: Doctrine of promissory estoppel - Whether doctrine is used in support of claim (as a sword) or in defence (as a shield).

The plaintiff had applied by originating summons under O. 89 r. 1 of RHC 1980 to oust the defendants summarily as trespassers without compensation from the 99 year lease land situated in H.S.(D) KN 31/89, No. P.T. 679, Mukim Bagan Serai.

Held:

[1] The defendants who occupied the said land on temporary occupation licences cannot acquire a right to be compensated by either a subsequent holder of a temporary occupation licence of the said land or by a subsequent registered proprietor for any expenses that the defendants might have incurred over the said land during their period of occupation under temporary occupation licences.

[2] Order 89 of the RHC 1980 applies in the present case and the plaintiff was entitled to recover possession against the defendants forthwith.

[Summary judgment granted to plaintiff for possession of land. Costs to plaintiff].

Cases referred to:
Central London Property Trust Ltd v. High Trees House Ltd [1947] KB 130 ***(refd)***
Combe v. Combe [1951] 2 KB 225 ***(refd)***
Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon & Ors. [1986] 1 MLJ 315 ***(refd)***
Savings and Investments Bank Ltd. v. Gasco Investments (Netherlands) BV [1984] 1 All ER 296 ***(refd)***
Sidek bin Haji Muhamad & 461 Ors. v. The Government of the State of Perak & Ors. [1982] 1 MLJ 313 ***(refd)***
Bohari bin Taib & Ors. v. Pengarah Tanah Galian Selangor [1991] 1 MLJ 343 SC ***(dist)***
Mohammad bin Buyong v. Pemungut Hasil Tanah, Gombak & Ors. [1982] 2 MLJ 53 ***(refd)***

Legislation referred to:
National Land Code 1965, ss. 66, 67, 69, 340(1)
Rules of the High Court 1980, O. 41 rr. 4, 5, O. 56 r. 2(2), O. 89 r. 1
Rules of the Supreme Court, O. 113 (UK)

Other sources referred to:
Law Relating to Estoppel by Representation, Spencer Bower and Turner, 2nd Edn., p. 339

For the plaintiff - Kamaluddin Maamor; M/s. Kamaluddin Maamor & Co.
For the defendants - M. Govindarajoo; M/s. Ahmed Bazari & Associates

JUDGMENT

Haji Abdul Malik Bin Haji Ishak JC:
The plaintiff is the registered proprietor of a piece of land ("the said land") comprised in H.S.(D) KN 31/89, No. P.T. 679, measuring 10,670 sq. feet, Mukim Bagan Serai, Daerah Kerian, Perak. The said land is on a 99 year lease, expiring on July 23,2088 (see the photostat copy of the title marked as exhibit "A"). The title to the said land was first issued to the plaintiff on 24 July 1989. The plaintiff proposed to build a two-storey complex on the said land but could not get the ball rolling as the defendants had squatted therein. Notices dated 28 April 1993 and 4 May 1993 were issued to the defendants giving them 30 days' grace to vacate and surrender vacant possessions to the plaintiff. But alas, these notices were ignored.

The defendants sought to establish that they were on the said land earlier and exhibited a temporary occupation licence in the name of one of the defendants for a period of one year beginning from 1 January 1984 till 31 December 1984 (see exhibit "MG2"). The defendants also exhibited a receipt issued in the name of one of the defendants purportedly from the Majlis Daerah and relied on the legend MD601/61 appearing therein and argued that by necessary inference they were on the said land way back in 1961. But on perusal of that receipt (see exhibit "MG3"), it was in fact payment for the licence to the Majlis Daerah for 1980 in the sum of RM121.

It is alleged that as a result of a meeting held on 11 July 1991 at the Dewan Serbaguna, Majlis Daerah Kerian, Bagan Serai between the defendants and government officials (comprising the District Officer of Kerian, the State MARA officer, the Secretary of the Majlis Daerah Kerian, the Assemblyman of Gunung Semanggol, the Assistant District Land Administrator of Krian, and the MARA officer from Parit Buntar), the Majlis Daerah Krian promised to provide a new site for the defendants to enable them to pursue their businesses afresh.

In stark terms, these are the facts of the case.

I am asked to boldly hold, in all the circumstances, that the plaintiff made a promise from which it cannot resile, that promise being that a new site would be allocated to the defendants. It is the contention of the defendants that the principle of promissory estoppel arises and operates adversely against the plaintiff. This principle was formulated by Denning J. (as he then was) in *Central London Property Trust Ltd. v. High Trees House Ltd* [1947] KB 130. His Lordship in that case held, *inter alia*, that the plaintiff's company had made a promise that was "intended to create legal relations, was to the knowledge of the promisor, to be acted upon by the promisee, and was in fact so acted upon by the promisee", and that the plaintiff's company was accordingly bound to honour its promise.

Now, applying Denning's principle to the facts in the present case, it seems to me that unless there was a promise by the plaintiff, this principle cannot help the defendants at all. Perusing through the minutes of the meeting that was held on 11 July 1991 (see exhibit "MG1"), it was Majlis Daerah Krian that made the promise and not the plaintiff. In the course of his opening

speech in that meeting, the District Officer of Krian emphatically stated that the Majlis Daerah Kerian would provide the new site for the defendants. This was what he said (see exhibit "MG1" at p. 2):

Ucapan Pengerusi:

Tuan Pengerusi mengucapkan salam dan terima kasih kepada para peniaga yang hadir pada hari ini bagi membincangkan tapak yang mereka duduki sekarang. Tanah adalah hakmilik MARA, oleh itu tuan/puan dipinta keluar dari kawasan tapak tersebut dan pihak Majlis Daerah Krian menyediakan tapak baru bagi membolehkan mereka berniaga semula. Majlis Daerah Krian belum lagi mengenal pasti tapak yang baru/tapak ganti. Pengerusi meminta kerjasama para peniaga mengosongkan tapak tersebut bagi membolehkan pihak MARA mendirikan bangunan yang telah dirancang.

At that meeting, the State MARA officer outlined the intention of the plaintiff to erect a building on the said land to house bumiputra businesses. Not a word was uttered by the State MARA officer to ever come close to the promise as adumbrated above. The State MARA officer said this (see exhibit"MG1" at p. 2):

Ucapan Pegawai Mara Negeri Perak.

Pegawai MARA Negeri mengucapkan terima kasih kepada semua yang hadir. Beliau memberitahu MARA dikehendaki mendirikan bangunan perniagaan atas permintaan orang ramai/pemimpin politik. Tanah yang dipohon lebih kurang 10 tahun dahulu di mana baru diluluskan. Bayaran premium tanah telah di jelaskan dan hakmilik telah dikeluarkan pada bulan Ogos 1989. Bangunan yang akan dibina adalah untuk menempatkan peniaga bumiputra sahaja. Sejak MARA memilik tanah tersebut tiada sebarang hasil/kutipan yang dibuat oleh pihak MARA. Oleh itu MARA memohon kerjasama Pegawai Daerah Kerian, Pentadbir Tanah Daerah, Wakil Rakyat serta semua pihak yang terlibat dalam menyelesaikan masalah ini demi untuk pembangunan di kawasan Bagan Serai.

Assuming that I am prepared to be with the defendants on this point i.e. that there was a promise by the plaintiff and that the defendants had acted upon this promise and duly complied with the conditions imposed (see exhibit "MG1" at p. 3 under column "keputusan", I am of the considered view that the defendants cannot succeed. It is now well known that there are limitations or modifications which should be imposed upon the doctrine enunciated by Denning J. (as he then was) in the *High Trees'* case *(supra).* See the works of Spencer Bower and Turner, 2nd. Edn., at p. 339 on the **Law Relating to Estoppel by Representation**. The authors of that book listed six limitations or modifications to Denning's principle. For the purpose of this judgment, I need only refer to two such limitations or modifications.

Firstly, the authors of that book had to consider whether the doctrine can be used to support a claim (as a sword) or whether its application is limited to matters of defence (as a shield). The authors concluded, quite rightly, that the doctrine may afford a defence against the enforcement of enforceable rights but it cannot create a cause of action. It is interesting to note that the *High Trees'* case was considered some five years later by Asquith LJ in *Combe v. Combe* (1951) 2 KB 225 where his Lordship said:

> What that case decides (meaning the *High Trees'* case) is that when a promise is given which (1) is intended to create legal relations, (2) is intended to be acted upon by the promisee, and (3) is in fact so acted upon, the promisor cannot bring an action against the promisee which involves the repudiation of his promise or is inconsistent with it. It does not, as I read it, decide that a promisee can sue on the promise. On the contrary, Denning J., expressly stated the contrary.

Secondly, the authors stated a rather novel proposition that he who raises an equitable estoppel must do equity to himself, otherwise equity will not come to his aid. In the present case, the committee that was formed to liase with the Majlis Daerah Krian must have been sleeping and adopting a could not care less attitude (see exhibit "MG1" at p. 3) otherwise an affidavit on its role would have been prepared by the defendants. In other words, the defendants did not conduct themselves in such a manner as to require the assistance of equity. It seems clear, therefore, on any view of the case in the context of the doctrine in *High Trees'* case, the defendants cannot succeed.

Next, Encik Kamaluddin Maamor submits on behalf of the plaintiff that Encik M. Govindarajoo ("the deponent") as Counsel for the defendants filed affidavits on behalf of the defendants (enclosures 62 and 70) which were not within the personal knowledge of the deponent and which the deponent was not of his own knowledge able to prove and, more importantly, were hearsay in

nature. It is now well known that affidavits play a very important role in interlocutory proceedings as submissions and decisions arrived at are based primarily on affidavit evidence. Order 41 of the Rules of the High Court, 1980 ("the RHC") sets out the basic rules of affidavit practice, for example an affidavit may be filed or used in evidence notwithstanding any irregularity as to its form provided that leave of Court is obtained (O. 41, r. 4 of the RHC). *Shankar J. in Million Group Credit Sdn.Bhd. v. Lee Shoo Khoon & Ors.* [1986] 1 MLJ 315 by way of an obiter said:

> A second point which needs to be emphasised is that the practice of solicitors themselves filing contentious affidavits in pending applications should be discouraged.

I fully subscribe to the view and I may add that the failure to reveal the sources of information and grounds of belief in an affidavit would be a failure to comply with the RHC unless, of course, the Court could treat such faliure as an irregularity and curable under O. 41, r. 4 of the RHC. In this case, the deponent averred in para 2 of his affidavit that: "semua maklumat yang dideposkan di sini adalah daripada defendan-defendan dalam tindakan ini", thereby coming within the purview of O. 41, r. 5 of the RHC. On hearsay evidence being incorporated in the affidavits of the deponent as alleged by Encik Kamaluddin Maamor, I must say that such hearsay evidence is caught under O. 41, r. 5 of the RHC provided it is first hand (*Savings and Investments Bank Ltd. v. Gasco Investments (Netherlands) BV* [1984] 1 All ER 296). In my judgment, the affidavits filed by the deponent though containing a number of irregularities are curable under O. 41 r. 4 of the RHC.

Much fuss was made by the defendants that being holders of TOLs they were entitled to be compensated. The brief recital of the facts showed that the defendants or at least one of them had a TOL for 1984 only. Temporary occupation licences are issued under ss. 66 and 67 of the National Land Code 1965 for a term expiring not later than the end of the calendar year in which they commence except that a temporary occupation licence combined with a permit to remove rock material may be issued for a longer period under s. 69 of the National Land Code. Though there is provision under the National Land Code for temporary occupation licences to be renewed annually yet there is no obligation on the part of the authorities to grant a renewal of a temporary licence for any subsequent year. It was submitted that the defendants held TOLs since 1961, but this would not bring the defendants anywhere closer to their dream of being compensated. In my judgment, the defendants who occupied the said land on temporary occupation licences cannot acquire a right to be compensated by either a subsequent holder of a temporary occupation licence of the said land or by a subsequent registered proprietor like that of the plaintiff for any expenses that the defendants might have incurred over the said land during the period which they occupied it under temporary occupation licences.

Next, it was submitted that the plaintiff being the registered proprietor of the said land had the power to oust the defendants who were plainly squatters on the principle of self-help without resorting to the Courts (see *Sidek bin Haji Muhamad & 461 Ors. v. The Government of the State of Perak & Ors.* [1982] 1 MLJ 313 FC). Put in another way, the plaintiff under the law is not obliged to go to the Courts to obtain possession of the said land. The plaintiff is entitled to go into the said land at any time and turn the defendants out like common criminals without the aid of the Courts of law. That course of action would certainly create turmoil in the peaceful town of Bagan Serai. But if that course is taken its legality is beyond question.

The plaintiff, being civil about it, now applies by originating summons under O. 89 r. 1 of the RHC to oust the defendants summarily as trespassers without a single compensation from the said land. Order 89 r. 1 of the RHC provides:

> 1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order.
>
> 2. The originating summons shall be in Form 8A and no acknowledgement of service shall be required.
>
> 3. The plaintiff shall file in support of the originating summons an affidavit stating:
>
> (a) his interest in the land;
> (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

(c) that he does not know the name of any person occupying the land who is not named in the summons.

It is pertinent to point out that O. 89 of the RHC resembles that of the English O. 113 RSC.

Encik M. Govindarajoo submits on behalf of the defendants that the present case is not a case of trespassing simpliciter but rather a case of the defendants being bestowed with TOLs and, consequently, O. 89 of the RHC could not be applied. He argues further that there are triable issues to be decided upon and it follows therefore that O. 89 of the RHC has no application at all.

Encik Kamaluddin Maamor, Counsel for the plaintiff, argues quite forcefully to the contrary.

It seems that the matter has been resolved in the recent Supreme Court case of *Bohari bin Taib & Ors. v. Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 SC where triable issues existed and therefore the Supreme Court held that it could not appropriately be dealt with and decided upon by affidavit evidence to evict occupiers by order of possession under O. 89 of the RHC. But the facts in the present case are entirely different. Both parties agreed that the matter could be dealt with by way of affidavit evidence. It is also not disputed that the defendants held expired TOLs and remained on the said land that had been alienated to the plaintiff on 24 July 1989 notwithstanding the eviction notices issued to them. Under our Torrens System the register is everything. Upon registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land (s. 340(1) of the National Land Code), that is, a title or an interest which is free of all adverse claims or encumbrances not noted on the register. I might as well mention that registration under the National Land Code is effected when a prescribed memorial of the dealing is made on the register document of title under the hand and seal of the registering authority (*Mohammad bin Buyong v. Pemungut Hasil Tanah, Gombak & Ors.* [1982] 2 MLJ 53). In my judgment, O. 89 of the RHC applies in the present case and the plaintiff is entitled to recover possession against the defendants forthwith. There is no provision for time. It is up to the plaintiff to give such time as it thinks fit. Costs should rightly go to the plaintiff. I certify in writing that no further argument is required (O. 56 r. 2(2) of the RHC).

MALAYAN BANKING BERHAD

v.

SIONG ELECTRONIC INDUSTRIES (1981) SDN. BHD. & 11 ORS.

HIGH COURT, KUALA LUMPUR
DATO' DR. ZAKARIA BIN MOHD YATIM J.
[CODE NO. D4-22-169-1992]
28 JANUARY 1994

PRACTICE AND PROCEDURE: Amendment to O. 32 r. 13 Rules of the High Court 1980 - 14-day time frame for filing of affidavits - Effect on pre-amendment O. 14 application - Whether amendment applied retrospectively.

INTERPRETATION: Section 30 Interpretation Acts 1948 and 1967 - Whether concerned with matters of procedures or of a substantive kind.

On 24 September 1992 the plaintiff filed an application for summary judgment against the defendant and a supporting affidavit for that application was filed on the same day. Subsequently two further affidavits were filed by the plaintiff on 7 September 1992 and 13 November 1992 respectively. An amendment to O. 32 r. 13 Rules of the High Court had subsequently been effected and on 1 August 1993 the said amendment came into force. The amendment introduced a new sub-rule to the Rule 13 and in effect provided first, that an affidavit intended to be used in support of an application must be filed and served within fourteen days after the filing of the application and secondly, any affidavit in reply to such affidavit must likewise be filed and served within fourteen days after the replying party had been served with such affidavit.

On 8 September 1993, about five weeks after the coming into force of the amendment, the plaintiff filed its fourth affidavit (enclosure 16) and on 15 September 1993 the defendants filed their affidavit in reply (enclosure 17) and served it on the plaintiff on that same day. At the hearing of the application on 16 September 1993, the Deputy Registrar drew the Court's attention to the aforesaid amendment and an issue thus arose whether the said amendment applied to enclosures 16 and 17 herein and hence whether the said enclosures could be considered by the Court for the purpose of the present application.